

BENNETT J. LEE (Bar No. 230482)
blee@wthf.com
GARRETT E. DILLON (Bar No. 216811)
gdillon@wthf.com
SARA K. HAYDEN (Bar No. 262922)
shayden@wthf.com
WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P.
333 Bush Street, Suite 1500
San Francisco, California 94104
Telephone 415-623-7000
Facsimile 415-623-7001

Attorneys for Plaintiff
MEDICAL DEVELOPMENT INTERNATIONAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEDICAL DEVELOPMENT
INTERNATIONAL, a Delaware
corporation,

Plaintiff,

v.

THE CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION; J CLARK KELSO,
in his capacity as receiver; and DOES 1
through 20, inclusive,

Defendants.

CASE NO. C 10-00443 TEH

FIRST AMENDED COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. WRONGFUL TERMINATION OF CONTRACT;
3. PROMISSORY ESTOPPEL;
4. QUANTUM MERUIT/UNJUST ENRICHMENT;
5. ASSUMPSIT;
6. ACCOUNT STATED;
7. VIOLATIONS OF CALIFORNIA'S PROMPT PAYMENT ACT;
8. NEGLIGENT MISREPRESENTATION;
9. FALSE PROMISE;
10. ECONOMIC DURESS; and
11. ABUSE OF PROCESS

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

COMES NOW, Plaintiff, MEDICAL DEVELOPMENT INTERNATIONAL ("MDI"), by its counsel, and for its First Amended Complaint ("FAC") against Defendants THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (the "CDCR"), J. CLARK KELSO in his capacity as receiver (the "Receiver"), and DOES 1 through 20.

///

///

PARTIES

1. Plaintiff MDI is incorporated in the State of Delaware and has its principal place of business in Ponte Vedra Beach, Florida. MDI is authorized to transact business in the State of California, and has continuously met all regulatory requirements necessary to perform the work described in this FAC.

2. Defendant CDCR is a Department of the State of California and the various correctional facilities throughout the state are not considered to be distinct legal entities. CDCR, its subsidiary divisions and its agents at the individual correctional facilities shall be known collectively as "CDCR."

3. Defendant Mr. J. Clark Kelso ("Mr. Kelso") is a federal receiver appointed by Order of this Court. Mr. Kelso replaced the previously appointed receiver, Mr. Robert Sillen, who was appointed on April 17, 2006. Mr. Kelso is sued in his capacity as a receiver (the "Receiver"), and in regard to all actions preceding his appointment taken by Mr. Sillen as receiver, and is so designated in the relevant causes of action enumerated herein.

4. DOES 1 through 20, inclusive, are sued herein under fictitious names. MDI is ignorant of the true names or capacities of the defendants sued herein under the fictitious names DOE 1 through 20, inclusive. When their true names and capacities are ascertained, MDI will amend this FAC by inserting their true names and capacities herein. MDI is informed and believes, and thereon alleges that each of the fictitiously named defendants is in some fashion legally responsible for MDI's damages. MDI is informed and believes further and thereon alleges that each of said fictitiously named DOE defendants 1 through 20, inclusive, and each of them, was the agent, partner, alter ego, employee and/or servant of the defendants, acting within the scope of such agency, partnership, alter ego and/or employment, and with the permission and consent of each of the other defendants, and each is in some manner legally responsible for, and proximately caused, any injuries and damages to MDI alleged herein, and/or each otherwise has an interest in the matters adjudicated herein.

VENUE AND JURISDICTION

5. This action is in front of this Court as a result of the Receiver's motion for removal

1 from the Superior Court of the State of California, County of Sacramento to the United States
 2 District Court for the Eastern District of California ("Eastern District") and the Receiver's motion
 3 for transfer from the Eastern District to this Court.

4 6. MDI has complied with the requirements of California Government Code section
 5 900 *et seq.* and properly exhausted all administrative remedies prior to bringing this action. MDI
 6 presented a Government Claim for damages to the California Victim Compensation and
 7 Government Claims Board on July 26, 2007 pursuant to the requirements of Government Code
 8 sections 915 and 915.2. Pursuant to Government Code section 912.4(c), the Government Claim
 9 has been denied. Therefore, pursuant to Government Code section 945.4, MDI is authorized to
 10 bring this action before the Court at this time.

11 **FACTUAL BACKGROUND**

12 7. MDI is one of the largest private administrators of prison health care systems in
 13 the United States, presently serving federal, state, and private prison institutions across the
 14 country. Headquartered in Florida, MDI specializes in providing administrative services designed
 15 to facilitate the timely and cost-effective delivery of health care to incarcerated persons. The
 16 Federal Bureau of Prisons has used MDI's services for more than ten years to manage the
 17 logistics of arranging hundreds of thousands of treatment encounters for inmates with private
 18 health care professionals. Working at the exclusive direction of prison medical staff, MDI uses
 19 proprietary software tools, and a network of health care providers, to deliver on requests for
 20 inpatient and outpatient treatment.

21 8. On October 3, 2005, this Court issued an opinion in Plata v. Schwarzenegger, 2005
 22 WL 2932253 (N.D. Cal.) determining that the California prison medical care system was "broken
 23 beyond repair," and finding that the "harm already done . . . to California's inmate population
 24 could not be more grave and the threat of future injury . . . all but guaranteed in the absence of
 25 drastic action." This Court underlined the urgency of reform by noting "it is an uncontested fact
 26 that, on average, an inmate in one of California's prisons needlessly dies every six to seven days
 27 due to constitutional inefficiencies in the CDCR's medical delivery system."

28 9. In recognition of these alarming systemic defects, this Court appointed Mr. Sillen

1 to serve as the Receiver in control of California's prison medical care system pursuant to a
 2 February 14, 2006 court order ("February Order").¹ According to the February Order, the
 3 Receiver was tasked with "bringing the level of medical care provided to California's 166,000
 4 inmates up to federal constitutional standards." Furthermore, this Court declared that time was of
 5 the essence, and instructed the CDCR to take "immediate and short-term measures designed to
 6 improve medical care."

7 10. This Court's February Order cautioned the Receiver to "make all reasonable
 8 efforts to exercise his powers, as described in the [February Order], in a manner consistent with
 9 California state law," while allowing that the Receiver may petition this Court for a waiver of
 10 state law if deemed necessary to effectuate the purpose of the federal receivership.

11 11. On February 22, 2006, this Court directed a court-appointed expert ("Correctional
 12 Expert") to investigate and report to the Receiver regarding the status of: (1) state contracts
 13 relating to health care services for inmates confined by the CDCR; (2) state contract negotiations
 14 relating to health care services for CDCR inmates; and (3) contractual payments to service
 15 providers who provide health care services to CDCR inmates.

16 12. The Correctional Expert authored a report (the "Report"), in consultation with Dr.
 17 Peter Farber-Szekrenyi, then Director of Correctional Health Care Services at the CDCR
 18 (hereafter "Dr. Farber-Szekrenyi"), and Mr. Darc D. Keller, then Assistant Secretary in the Office
 19 of Health Care Policy at the CDCR (hereafter "Mr. Keller"),² that assessed the status of state
 20 contracts related to the delivery of health care services to California inmates, and the existing
 21 process for procuring and paying for such medical services. The report was filed with this Court
 22 on March 27, 2006.

23 13. The Report noted that the acquisition of, and payment for, inmate health care was
 24 dangerously stymied by a lumbering agency bureaucracy:

25 *The CDCR process for negotiating, processing, renewing, and payment of medical*
 26 *contracts has collapsed.* Hundreds, if not thousands of critical health care
 contracts are, as of today, in limbo because existing contracts with well-established

27 ¹ After initial identification, MDI will refer to both Mr. Sillen and Mr. Kelso as the "Receiver."

28 ² Both Dr. Farber-Szekrenyi and Mr. Keller were legislatively appointed to positions within the CDCR in
 2005 largely to assist with the restructuring of California's health care delivery system.

1 providers at every CDCR prison have expired, or are about to expire. Under the
 2 new rules, these contracts cannot be renewed because of a competitive bid
 3 requirement. Likewise, necessary new contracts for critical care cannot, and have
 4 not been established.

5 [Emphasis in the original]

6 14. This Court found the Report damning, declaring “[t]he Report sets forth another
 7 chilling example of the inability of the CDCR to competently perform the basic functions
 8 necessary to deliver constitutionally adequate medical health care.” This Court emphasized that
 9 the “administrative processes” governing the execution of medical health care contracts between
 10 the CDCR and private companies were unduly “time-consuming” and “complex,” often forcing
 11 providers to work without formally finalized contracts. This Court further noted that bureaucratic
 12 inefficiencies resulted in chronic nonpayment of health care providers, thereby forcing providers
 13 to seek compensation by filing an administrative claim with the California Victims and
 14 Government Claims Board. This Court, citing to the Report, warned that the prison health care
 15 crisis could grow worse as private health care providers refused to engage in business with the
 16 CDCR for fear of nonpayment. In fact, at the time the Report was issued, the CDCR had a
 17 backlog of outstanding invoices for health care services totaling tens of millions of dollars.

18 15. In order to remedy this state of disrepair, this Court, in a March 30, 2006 court
 19 order (“March Order”), mandated, in section B of the March Order, that the CDCR pay all
 20 “outstanding, valid and *CDCR-approved* medical invoices (even in the absence of a separate
 21 written approved contract) within 60 days of the date of this Order.” [Emphasis added]. This
 22 Court described this mandate as an “emergency payment process.” Additionally, pursuant to this
 23 emergency payment process, this Court required the CDCR to continue to “pay received invoices
 24 for services . . . until new processes are in place.” While the emergency payment process
 25 remained in effect, paragraph B.4 of the March Order explicitly exempted the CDCR from both
 26 the competitive bidding and bid exemption application requirements, so as to enable the timely
 27 execution of new health care provider contracts while the state contracting system was revamped.
 28 To that end, the March Order vested the CDCR, and specifically Dr. Farber-Szekrenyi, with the
 mandate and authority to develop and enforce interim emergency regulations as deemed

1 necessary. A true and accurate copy of the March Order is attached as Exhibit A.

2 16. According to the March Order, the emergency procedures were to remain in place
3 during a 180-day "planning period" from the date the order was issued, March 30, 2006.
4 However, on November 8, 2006, in a supplemental court order, this Court extended the
5 "emergency payment and no-bid provisions set forth in the [March] Order" indefinitely.
6 Therefore, the November 8, 2006 order ("November Order") extended the CDCR's obligations to
7 pay the outstanding, valid and "CDCR-approved" medical invoices received pursuant to
8 agreements with private contractors indefinitely. A true and accurate copy of the November
9 Order is attached as Exhibit B.

10 17. In or around April 2006, the Receiver made the decision to allow the Division of
11 Correctional Health Care ("DCHC"), and Dr. Farber-Szekrenyi as Director of DCHC, to "retain
12 direct management over the daily operation of the prison medical delivery system." Dr. Farber-
13 Szekrenyi's direct management responsibilities, as delegated by the Receiver pursuant to the
14 March Order, included controlling "medical contracts processing, recruitment, hiring, and human
15 resource transaction" as related to the delivery of medical treatment to CDCR inmates. This
16 management responsibility was endorsed by the Receiver until December 2006.

17 18. In response to the March Order, the Receiver issued a letter to all then-existing
18 CDCR service providers on May 1, 2006. The letter, in a public effort to encourage the private
19 sector to "continue to work with [the Receiver and the CDCR] while [the Receiver and the
20 CDCR] reform California's medical care system," reaffirmed the Receiver's commitment to:

- 21 (1) Payment, within 60 days, of more than \$58 million in past-due bills that have
22 been submitted by medical care providers to the CDCR;
- 23 (2) Timely payment of valid and approved bills submitted by clinical providers to
24 the CDCR in the future; and
- 25 (3) The establishment of health care orientated policies and standards to govern
26 CDCR medical contract management.

26 19. Imbued with the express authority provided by the March Order, and instilled with
27 a pressing sense of urgency to quickly improve the delivery of health care to sick inmates, the
28 CDCR engaged MDI to participate in a pilot program at the California State Penitentiary, Los

1 Angeles (“LAC”) and the California Correctional Institution in Tehachapi (“CCI”). The CDCR
 2 recognized that a core problem for prison staff was non-medical in nature – namely, the
 3 technologically ill-equipped and understaffed bureaucracy responsible for finding doctors,
 4 scheduling treatments, and paying health care providers was simply too slow and unwieldy.
 5 Consequently the CDCR sought to explore whether MDI’s state-of-the-art proprietary software
 6 systems and administrative expertise could provide crucial logistical efficiencies to the health
 7 care delivery process at the aforementioned institutions (hereafter the “Pilot Program”).

8 20. By March 2006, the CDCR had entered into advanced negotiations with MDI. On
 9 March 8, 2006, MDI submitted to the CDCR a detailed proposal regarding the range of services
 10 MDI intended to provide to LAC and CCI prison staff, including a full disclosure of the proposed
 11 pricing of said services. Pursuant to the March Order, the CDCR engaged MDI in direct
 12 negotiations in an effort to provide the necessary health services to inmates as quickly as possible.
 13 Subsequently, in the final days of August 2006, the CDCR provided MDI with a copy of a
 14 completed and signed “Justification for Contract Services Form,” and a completed and signed
 15 “Bid/Contract Request” form (hereinafter the “Contract Documents”). The “Bid/Contract
 16 Request” included a detailed statement of work that, in conjunction with MDI’s March 8
 17 proposal, comprehensively defined the scope of services MDI agreed to provide to LAC and CCI
 18 medical staff, calculations of payments, and base contract price. Specifically, the parties agreed
 19 that MDI would:

- 20 (a.) Enter into agreements with physicians and hospitals whereby those physicians and
 21 hospitals agree to perform medical services at the request of prison medical staff;
- 22 (b.) Assist prison staff in locating medical specialists outside MDI’s referral network;
- 23 (c.) Implement a centralized system for scheduling and tracking in and outpatient care;
- 24 (d.) Implement a centralized billing system for payments claims by health-care
 providers; and
- 25 (e.) Receive prompt compensation from the CDCR for all contracted for services.

26 21. Further, in order to ensure the most comprehensive, efficient, and cost-effective
 27 access to health care professionals and facilities, MDI agreed to initially pay the invoices
 28 submitted by providers treating prisoners before submitting its invoice to, and receiving payment

1 from, the CDCR. The CDCR in turn agreed to reimburse MDI for those payments. Under this
2 arrangement, hospitals and physicians are protected from any late payment by the prison
3 institution, as MDI ensures timely payment, and thus providers are more willing to remain
4 available and responsive to prison medical staff at competitive rates. This business model,
5 however, while bestowing many critical improvements to the process of delivering health care to
6 inmates, imposed a substantial financial risk on MDI if the CDCR failed to timely reimburse
7 MDI.

8 22. The CDCR expressly authorized and ordered MDI to begin work at the beginning
9 of September 2006 in accordance with the March Order and the Contract Documents.

10 23. The CDCR management instructed the CDCR staff at CCI and LAC to cooperate
11 with MDI and provide MDI access to CDCR facilities and computer networks. This included
12 providing CDCR clearance to physically enter LAC and CCI, issuing contractor access badges,
13 and publicly recognizing MDI's authority to direct certain work at CCI and LAC (e.g., change
14 scheduling practices).

15 24. Although all material contract terms had been agreed to and reduced to writing
16 between the parties prior to September 1, 2006, both the CDCR and MDI were mutually aware
17 that a separate final contract had not been issued. However, MDI and the CDCR, relying on the
18 emergency payment processes set forth in the March Order, and acting pursuant to the authority
19 delegated to the CDCR by the Receiver, entered into a binding contract on August 31, 2006
20 without waiting for a separate approval to filter through the many hurdles of the state
21 bureaucracy. The Contract Documents constituted a valid and enforceable written contract by
22 and between MDI and the CDCR. The CDCR gave MDI notice to proceed with the work on
23 September 1, 2006.

24 25. The CDCR repeatedly assured MDI that it was contractually and legally
25 committed to paying for the services rendered, and that the CDCR considered the executed
26 Contract Documents a valid written contract for services. The CDCR represented to MDI that it
27 was customary for contractors employed by the CDCR to begin work prior to having a formal
28 contract, even without the emergency procedures in place, due to the lengthy contract approval

1 process. Further, CDCR in-house counsel had internally cleared the CDCR to proceed with
2 contracting pursuant to the emergency contracting procedures set forth in the March Order.

3 26. In response to, and in reliance upon, the emergency contracting authority provided
4 by the March Order, the execution of the Contract Documents, the extenuating health care
5 emergency facing the prison populations at LAC and CCI, the CDCR's repeated and express
6 representations, and the CDCR's directive to proceed on September 1, 2006, MDI provided a
7 range of crucial administrative services to both LAC and CCI beginning in September 2006 until
8 April 2007.

9 27. In just a few months, utilizing MDI's software tools and logistical expertise, the
10 CCI staff eliminated a backlog of over 100 specialty appointments, reduced the average length of
11 stay for inpatient treatment from 12 days to 3 days, and dramatically reduced medical grievances
12 voiced by inmates. Most importantly, MDI's information systems increased the number of
13 specialty services delivered at the prison ten-fold, thereby preserving precious transportation and
14 custody resources for those with more pressing outpatient medical needs. As a result of these
15 achievements, the CCI staff and a representative of the Prison Law Office³ found that MDI's
16 consulting services had resulted in CCI satisfying the required standards for medical care within
17 just three months.

18 28. At LAC, MDI created a more dramatic improvement. The LAC health services
19 and custody staff eliminated a backlog of over 400 specialty appointments, 250 of which were
20 performed on-site, again preserving transportation and custody resources for those in greatest
21 need of outpatient care. Further, MDI's consulting services reduced medical grievances from an
22 average of 350 per month to just 120, and virtually eliminated a 55% cancellation rate for medical
23 appointments.⁴

24 29. On November 2, 2006, Dr. Farber-Szekrenyi issued a formal memorandum to CCI
25 and LAC, with a copy to MDI, to explain MDI's legal position as a CDCR contractor. Dr.

26
27 ³ The Prison Law Office is the entity that originally initiated the class action lawsuit culminating in the
appointment of the Receiver.

28 ⁴ In fact, MDI was so successful that wardens from other institutions in California requested MDI's services,
having heard from CCI and LAC staff of the enormous progress made.

1 Farber-Szekrenyi explained that MDI was part of a pilot program intended to “fully assess the
2 ability of MDI to meet most, if not all, of an institution’s service needs,” and declared that all
3 invoices submitted by MDI were to be paid “utilizing the March 30 Plata Court Order as
4 authorization.”

5 30. Mr. John Hagar (“Mr. Hagar”), the Receiver’s chief of staff, was informed by
6 CDCR staff of MDI’s contract in or around November 2006, at the latest.

7 31. In or around the first week of December 2006, the Receiver decided to assume
8 direct management responsibility for the day-to-day operation of the “prison medical delivery
9 system,” previously delegated to Dr. Farber-Szekrenyi. In so doing, the Receiver nonetheless
10 publicly acknowledged: “I am not criticizing the efforts of Peter Farber-Szekrenyi and the
11 dedicated staff of the Division of Correctional Health Services who continue to attempt in good
12 faith to correct the intractable problems with inadequate resources.”

13 32. In or around December 2006, after MDI had successfully provided necessary
14 services to the CDCR for approximately four months, a CDCR staff member internally raised the
15 idea that MDI may be engaging in the corporate practice of medicine.

16 33. Dr. Farber-Szekrenyi, recognizing the importance of MDI’s services, appointed a
17 CDCR staff attorney to work with MDI to either draft a restructured agreement for services that
18 alleviated the CDCR’s alleged concerns regarding compliance with medical licensing provisions
19 or to report that no such agreement is possible.

20 34. By December 26, 2006, the CDCR approved a jointly prepared restructured
21 agreement. Dr. Farber-Szekrenyi was informed that the contract had been amended to eliminate
22 any concern that MDI may potentially be engaging in the corporate practice of medicine. Mr.
23 Keller was informed that a copy of the restructured agreement was being sent to Dr. Farber-
24 Szekrenyi for his signature.

25 35. In early January 2007, having not yet received any documents, Dr. Farber-
26 Szekrenyi inquired as to the status of the restructured agreement. At that time, Dr. Farber-
27 Szekrenyi was informed that Mr. Hagar had abruptly seized the new agreement.

28 36. Dr. Farber-Szekrenyi then met with Mr. Hagar to discuss the reasons for the

1 interference with MDI's contract, and was informed that the Receiver believed MDI's work
 2 constituted the corporate practice of medicine, despite the CDCR's express opinion to the
 3 contrary. Mr. Hagar, acting on behalf of the Receiver, declared that the Receiver had therefore
 4 suspended the process of finalizing the contract and unilaterally stopped payments on all invoices
 5 submitted by MDI. Mr. Hagar made it clear that the Receiver would exclusively decide the fate
 6 of MDI's contract, despite the CDCR's endorsement of MDI's performance.

7 37. The last payment MDI received from the CDCR was on January 5, 2007. Prior to
 8 Mr. Hagar's involvement the CDCR never disputed MDI's invoices.

9 38. In an effort to understand and address the actions of the Receiver and his
 10 representatives, MDI continuously attempted to engage the Receiver and his representatives in
 11 discussions regarding the frozen invoice payments.

12 39. During the latter part of January 2007, Dr. Farber-Szekrenyi and Mr. Keller also
 13 engaged in efforts to arrange a meeting between MDI and the Receiver to secure payments owed
 14 by the CDCR to MDI. The Receiver refused to meet with MDI until February 16, 2007.

15 40. However, during December 2006 and January 2007, following the Receiver's
 16 assumption of the day-to-day management of the CDCR's health care contracting and delivery
 17 system, the Receiver held three all-day meetings with certain CDCR employees. The goal of
 18 these meetings was four-fold:

- 19 (a.) to identify the current projects and activities underway and determine
 20 which projects should continue;
- 21 (b.) to identify additional critical projects or activities to initiate in the near
 22 future;
- 23 (c.) to identify those important projects that will not be initiated in the near
 24 future; and
- (d.) to prioritize and allocate resources for selected projects and activities.

25 Despite the Receiver's full awareness of MDI's situation at the time of this review, at no time
 26 following these meetings, and prior to April 6, 2007, was MDI directed to stop providing services
 27 to LAC or CCI, or instructed to stop paying health care providers for medical care given to
 28 CDCR inmates. Rather, upon concluding an assessment of projects and activities under the

1 control of the Receiver during December 2006 and January 2007, which included MDI's contract,
2 the Receiver merely determined it necessary to "seek the waiver of state laws and regulations
3 from the Court as necessary to ensure professional and timely contracting process."

4 41. Despite the Receiver's decision to withhold all payment, MDI recognized the
5 ongoing threat to inmate life, and, at the urging of the CDCR and in reliance on the emergency
6 payment process set forth in the March Order, MDI continued providing services to LAC and
7 CCI without compensation.

8 42. On the morning of February 16, 2007, the Receiver met with Dr. Farber-Szekrenyi
9 and terminated him. At that time, the Receiver informed Dr. Farber-Szekrenyi that MDI would
10 never be paid.

11 43. Subsequently, during the afternoon of February 16, 2007, more than a month
12 following the initial suspension of payment, the Receiver finally met with MDI. The Receiver
13 noted that MDI was "unfortunately, doing a good job," but reiterated his opinion that MDI
14 required a medical license to perform its services, an opinion that was contrary to that of the
15 CDCR's own legal department. The Receiver represented that MDI could be paid for services
16 rendered if it were determined that MDI needed no medical license, despite knowing that he
17 would not pay MDI for services rendered under any circumstances. The Receiver then instructed
18 MDI to continue its work at LAC and CCI without payment. When MDI expressed reservations
19 about continuing under such circumstances, the Receiver declared that, should MDI fail to follow
20 his direction, he would "make sure MDI never worked in California again."

21 44. Following the February 16, 2007 meeting, fearing for its future ability to do
22 business in California, MDI felt that it had no choice but to continue to provide services pursuant
23 to the requirements of the Pilot Program, and relied on the emergency payment process of the
24 March Order and the Receiver's representations regarding future payment.

25 45. On March 7, 2007, MDI provided the Receiver with a legal opinion letter from
26 retained counsel explaining that a medical license was unnecessary for the kind of non-medical
27 administrative work performed by MDI.

28 46. After that legal opinion was issued to the Receiver, MDI attempted, on several

1 occasions, to schedule another meeting with the Receiver to address any remaining concerns.
2 The Receiver rejected all overtures, and refused to accept the opinion and alternative contract
3 proposals previously accepted by the CDCR's legal department.

4 47. Nonetheless, despite his previous representation to Dr. Farber-Szekrenyi that he
5 would not pay MDI, the Receiver, on March 26, 2007, demanded that MDI procure an advisory
6 opinion, within ten days, from the Medical Board of California. The Medical Board of
7 California, by its own admission, does not, as a matter of practice, provide advisory opinions
8 within such a short time at the request of a private party.

9 48. Further, the Receiver demanded that MDI release confidential information
10 regarding MDI's contractual arrangements with the health care providers in its referral network.

11 49. In response to the Receiver's demands, MDI offered to provide the proprietary
12 information, but requested that the Receiver sign a confidentiality agreement to prevent that
13 information from leaking into the marketplace. Again, the Receiver failed to respond to this
14 request for confidentiality.

15 50. Despite MDI's substantial efforts to comply with all of the Receiver's demands, on
16 April 7, 2007, the Receiver terminated all contact with MDI and physically expelled MDI
17 personnel from LAC and CCI without warning.

18 51. The CDCR's and the Receiver's actions, resulting in the non-payment and
19 eventual termination of MDI, disrupted a working solution to the prison medical health care crisis
20 and jeopardized the State of California's ability to procure and retain private sector health care
21 services necessary to the well-being of California's inmate population. The CDCR's and the
22 Receiver's actions regarding MDI have prevented inmates at various CDCR facilities from timely
23 acquiring specialized medical care and perpetuated a reluctance within the private sector, as
24 observed by this Court in the March Order, to contract with the CDCR.

25 52. The CDCR and the Receiver must rely on private sector support to resolve the
26 prison health care crisis as the CDCR cannot provide the services that MDI provides. MDI is
27 informed and believes that the Receiver served a Request for Proposals on August 10, 2007
28 seeking consultants to assist the CDCR in establishing a method for providing the same services

MDI was previously providing pursuant to the Contract Documents.

53. The CDCR's and the Receiver's attempts to prevent MDI from providing crucial healthcare related services pursuant to the Contract Documents have placed the life and safety of the CDCR's inmate population at risk. Unless judicial action is taken to hold the CDCR and the Receiver accountable, the ability of the State of California to remedy the existing health care crisis, and in particular, contract with private sector health care providers, will remain critically impeded.

54. MDI has incurred significant monetary losses for the work performed for the CDCR at LAC and CCI during the period from September 2006 through April 2007. The information systems implemented by MDI bestowed a significant benefit upon the State of California and its inmate population, and compensation has been unlawfully withheld by the CDCR and the Receiver.

55. As a direct result of the Receiver wrongfully terminating MDI, MDI also lost the expected profits of its contract with the CDCR.

56. The Receiver has made good on his threats that he would "make sure MDI never worked in California again." Since MDI was improperly terminated, it has been denied at least two state contracts on which it was either the lowest qualified bidder or a subcontractor to the lowest qualified bidder due, in part, to perceived "conflicts of interest" between MDI and the CDCR.

FIRST CAUSE OF ACTION

(FOR BREACH OF CONTRACT AGAINST ALL DEFENDANTS)

57. MDI incorporates by reference all of the above paragraphs as if each were fully alleged herein.

58. In or around March 2006, MDI submitted to Dr. Farber-Szekrenyi a detailed proposal offering administrative solutions to the CDCR's medical health care delivery crises. The proposal included a comprehensive statement of work and a full disclosure of the pricing structure for the offered services.

59. Following receipt of MDI's proposal, MDI and the CDCR engaged in months of

1 arms-length negotiations regarding the scope, price, terms, and feasibility of a prospective
2 contract for the provision of services by MDI to the CDCR.

3 60. On or about August 31, 2006, the CDCR provided MDI with an executed copy of
4 the Contract Documents. The Contract Documents, together with MDI's proposal, set forth all
5 material terms of the services MDI was expected to provide to LAC and CCI staff as a CDCR
6 contractor, including a comprehensive scope of work, an explanation of payment calculations for
7 the performance of services, and a statement of the base contract price. The Contract Documents
8 constituted a valid and enforceable written contract by and between MDI and the CDCR.

9 61. Pursuant to the emergency contracting authority provided by the March Order, and
10 the Receiver's express delegation of contracting authority to DCHS, Dr. Farber-Szekrenyi
11 possessed the legal authority to enter into a valid and binding contract with MDI on behalf of the
12 CDCR and the Receiver, and in fact did so.

13 62. The CDCR ordered MDI to begin providing administrative services pursuant to the
14 executed Contract Documents, representing that the Contract Documents constituted a legally
15 binding agreement. The CDCR further acknowledged the existence of a legal binding agreement
16 by allowing MDI personnel access to secure CDCR facilities and instructing CDCR staff to
17 comply with directions from MDI pursuant to the terms of the Contract.

18 63. The CDCR further acknowledged the existence of a binding contract by informing
19 MDI that any additional involvement in the contracting process by representatives of the State of
20 California and/or the Receiver affecting or involving the executed Contract Documents
21 constituted a mere formality and presented no bar to the binding effect of the Contract
22 Documents.

23 64. The CDCR also acknowledged the existence of a binding contract by repeatedly
24 promising that the CDCR was bound to pay MDI for its services in accordance with the Contract
25 Documents.

26 65. The execution of the Contract Documents, combined with the emergency
27 contracting authority imbued to the CDCR and the Receiver by the March Order, Dr. Farber-
28 Szekrenyi's authority to enter into contracts of behalf of the CDCR and the Receiver, and the

1 CDCR's representations to MDI, conclusively demonstrate the existence of a valid and legally
2 enforceable contract between MDI and the CDCR.

3 66. The executed Contract Documents formed a valid written contract and the CDCR
4 had a contractual obligation and legal duty, *inter alia*, to make full and timely payments due
5 pursuant to the Contract Documents.

6 67. MDI has performed all things on its part to be performed under the Contract
7 Documents, except to the extent it has been legally excused.

8 68. In or around December 2006, the CDCR, at the direction of the Receiver,
9 wrongfully failed to make all payments due to MDI for services performed pursuant to the
10 Contract Documents and thereby failed to perform, without excuse or justification, a material
11 covenant of the Contract Documents.

12 69. On or about April 6, 2007, the CDCR and the Receiver wrongfully prevented MDI
13 from continuing to perform its obligations pursuant to the Contract Documents by physically
14 expelling MDI personnel from CDCR facilities without notice or justification.

15 70. The failure to make contractually required payments for MDI's services, followed
16 by the CDCR and the Receiver withholding access to CDCR facilities on or about April 6, 2007,
17 constitute a material and total breach of the Contract Documents.

18 71. The Contract Documents further imposed an implied duty of good faith and fair
19 dealing upon the CDCR and the Receiver in the performance of any rights, obligations and duties
20 possessed by the CDCR and the Receiver and/or owed to MDI pursuant to the Contract
21 Documents.

22 72. The CDCR and the Receiver consciously and deliberately failed and refused to
23 discharge its responsibilities consistent with their duty of good faith and fair dealing by
24 wrongfully withholding payments from MDI for services rendered, which frustrated the agreed
25 common purposes of the parties to the Contract Documents and disappointed the reasonable
26 expectations of MDI by depriving it of the benefits of the agreement.

27 73. The CDCR and the Receiver consciously and deliberately failed to discharge their
28 responsibilities consistent with their implied duty of good faith and fair dealing by wrongfully

1 refusing to execute a revised and modified contract between MDI and the CDCR in or around
2 December 2006.

3 74. The Receiver also has made good on his threats that he would "make sure MDI
4 never worked in California again." Since MDI was improperly terminated, it has been denied at
5 least two state contracts on which it was either the lowest qualified bidder or a subcontractor to
6 the lowest qualified bidder due, in part, to perceived "conflicts of interest" between MDI and the
7 CDCR.

8 75. As a direct and proximate result of the CDCR's and the Receiver's material
9 breaches of the Contract Documents, MDI has sustained substantial damages to be determined
10 according to proof. These damages include the amounts due to MDI for services performed and
11 for the lost future profit under the contract.

12 76. MDI's damages also include, without limitation, the loss of future business and
13 profits on other California contracts, which was a foreseeable and intended result of the CDCR's
14 and the Receiver's material breaches of the contract.

15 77. As a direct result of the CDCR's and the Receiver's material breaches of the
16 Contract Documents, the CDCR and the Receiver have placed the life, health and safety of
17 CDCR's inmate population at risk. MDI's lawsuit will therefore result in the enforcement of an
18 important right affecting the public interest, namely unobstructed and unfettered access to private
19 health care services that the CDCR itself cannot provide.

20 78. Under the circumstances herein presented, the necessity and financial burden of
21 enforcing this right make an award of attorneys' fees appropriate pursuant to Code of Civil
22 Procedure section 1021.5.

23 79. The attorneys' fees incurred in the enforcement of this right should not, in the
24 interests of justice, be paid out of MDI's recovery.

25 WHEREFORE, MDI prays for relief as hereinafter set forth.

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION

(FOR WRONGFUL TERMINATION OF CONTRACT AGAINST ALL DEFENDANTS)

80. MDI incorporates by reference all of the above paragraphs as if each were fully alleged herein.

81. The CDCR and the Receiver had a material duty, pursuant to the Contract Documents, not to wrongfully terminate the Contract.

82. The CDCR and the Receiver had a duty, pursuant to the Contract Documents, to render, in good faith, decisions regarding the termination of the Contract.

83. The CDCR and the Receiver breached their obligations pursuant to the Contract Documents by wrongfully terminating MDI on April 6, 2007, without notice or justification.

84. The CDCR and the Receiver consciously and deliberately failed and refused to discharge their responsibilities consistent with their implied duty of good faith and fair dealing by wrongfully terminating MDI and ejecting MDI personnel, without warning or justification, from CDCR facilities in or around April 6, 2007.

85. The Receiver has made good on his threats that he would "make sure MDI never worked in California again." Since MDI was improperly terminated, it has been denied at least two state contracts on which it was either the lowest qualified bidder or a subcontractor to the lowest qualified bidder due, in part, to perceived "conflicts of interest" between MDI and the CDCR.

86. As a direct and proximate result of the CDCR's and the Receiver's wrongful termination of the Contract, MDI has sustained substantial damages to be determined according to proof. These damages include the amounts due to MDI for services performed and for the lost future profit under the contract.

87. MDI's damages also include without limitation the loss of future business and profits on other California contracts, which was a foreseeable and intended result of the CDCR's and the Receiver's wrongful termination of the Contract.

88. As a direct result of the CDCR's and the Receiver's wrongful termination of the Contract, the CDCR and the Receiver have placed the life, health and safety of the CDCR's

1 inmate population at risk. MDI's lawsuit will therefore result in the enforcement of an important
 2 right affecting the public interest, namely unobstructed and unfettered access to private health
 3 care services that the CDCR itself cannot provide.

4 89. Under the circumstances herein presented, the necessity and financial burden of
 5 enforcing this right make an award of attorneys' fees appropriate pursuant to Code of Civil
 6 Procedure section 1021.5.

7 90. The attorneys' fees incurred in the enforcement of this right should not, in the
 8 interests of justice, be paid out of MDI's recovery.

9 WHEREFORE, MDI prays for relief as hereinafter set forth.

10 **THIRD CAUSE OF ACTION**

11 **(FOR PROMISSORY ESTOPPEL AGAINST ALL DEFENDANTS)**

12 91. MDI incorporates by reference all of the above paragraphs as if each were fully
 13 alleged herein.

14 92. On or about March 8, 2006, MDI submitted to Dr. Farber-Szekrenyi a detailed
 15 proposal regarding the range of services MDI intended to provide to LAC and CCI prison staff,
 16 including a full disclosure of the proposed pricing of said services. On or about August 31, 2006,
 17 the CDCR provided MDI with a copy of the completed and signed Contract Documents, which
 18 included a detailed statement of work that, in conjunction with MDI's March 8 proposal,
 19 comprehensively defined the scope of services MDI should provide to LAC and CCI medical
 20 staff. The CDCR then ordered MDI to begin providing services pursuant to the Contract
 21 Documents, stating that the execution of a final contract was a mere formality, and that the
 22 executed Contract Documents themselves constituted the necessary written authorization for MDI
 23 to begin work. Further, Dr. Farber-Szekrenyi expressly stated that the CDCR would pay MDI for
 24 its services pursuant to the executed Contract Documents.

25 93. The CDCR's express representations of fact that the CDCR would pay MDI for its
 26 services were clear and unambiguous, and constituted a promise that the CDCR would pay MDI
 27 for the services MDI was to provide in accordance with the Contract Documents.

28 94. MDI actually and justifiably relied upon the CDCR's promise and immediately

1 began providing services at both LAC and CCI due to the expectation of compensation.

2 95. The CDCR's promise was clearly intended to induce MDI to provide services
3 pursuant to the Contract Documents, and MDI's reliance on the CDCR's promise is both
4 reasonable and foreseeable.

5 96. As a direct and proximate cause of the CDCR's and the Receiver's promise to pay
6 MDI for its services, MDI incurred not less than \$4 million in costs, for which the CDCR and the
7 Receiver have wrongfully refused to pay.

8 97. As a direct result of the CDCR's and the Receiver's failure to perform their
9 promise and make payment to MDI for its services, MDI has sustained a substantial detriment in
10 the form of uncompensated expenditures and lost profits in an amount to be determined according
11 to proof.

12 98. As a direct result of the CDCR's and the Receiver's failure to perform their
13 promise and make payment to MDI for its services, MDI has sustained a substantial detriment in
14 the form of loss of future business and profits on other California contracts, which was a
15 foreseeable and intended result of the CDCR's and the Receiver's failure to perform its promise
16 to make payment to MDI.

17 99. As a direct result of the CDCR's and the Receiver's failure to perform its promise
18 and make payment to MDI for its services, the CDCR and the Receiver have placed the life,
19 health and safety of the CDCR's inmate population at risk. MDI's lawsuit will therefore result in
20 the enforcement of an important right affecting the public interest, namely unobstructed and
21 unfettered access to private health care services that the CDCR itself cannot provide.

22 100. Under the circumstances herein presented, the necessity and financial burden of
23 enforcing this right make an award of attorneys' fees appropriate pursuant to Code of Civil
24 Procedure section 1021.5.

25 101. The attorneys' fees incurred in the enforcement of this right should not, in the
26 interests of justice, be paid out of MDI's recovery.

27 WHEREFORE, MDI prays for relief as hereinafter set forth.

28 ///

FOURTH CAUSE OF ACTION

(FOR QUANTUM MERUIT/UNJUST ENRICHMENT AGAINST ALL DEFENDANTS)

102. MDI incorporates by reference all of the above paragraphs as if each were fully alleged herein.

103. Beginning in September 2006, MDI began providing services at both LAC and CCI, pursuant to, *inter alia*, the terms of the Contract Documents and the March Order's emergency procurement measures.

104. The reasonable value of said work, labor, and services that were rendered and performed, and of such goods and materials that were furnished, delivered and installed at the request of the CDCR substantially exceeds the payments made to MDI by the CDCR.

105. The services provided by MDI, including paying for medical services provided to CDCR inmates, conferred a substantial and undisputed benefit on the CDCR and the Receiver.

106. MDI has been damaged due to nonpayment, and the CDCR and the Receiver have been unjustly enriched, in an amount to be determined according to proof.

107. MDI is entitled to recover against the CDCR and the Receiver the reasonable value of the work, labor, services, and such goods and materials provided by MDI.

108. As a direct and proximate result of the acts and omissions identified herein, the amount owing by the CDCR and the Receiver to MDI exceeds the jurisdictional minimum of the Court.

109. As a direct result of the CDCR's and the Receiver's failure to make payment to MDI, the CDCR and the Receiver have placed the life, health and safety of the CDCR's inmate population at risk. MDI's lawsuit will therefore result in the enforcement of an important right affecting the public interest, namely unobstructed and unfettered access to private health care services that the CDCR itself cannot provide.

110. Under the circumstances herein presented, the necessity and financial burden of enforcing this right make an award of attorneys' fees appropriate pursuant to Code of Civil Procedure section 1021.5.

111. The attorneys' fees incurred in the enforcement of this right should not, in the

1 interests of justice, be paid out of MDI's recovery.

2 WHEREFORE, MDI prays for relief as hereinafter set forth.

3 **FIFTH CAUSE OF ACTION**

4 **(FOR ASSUMPSIT AGAINST ALL DEFENDANTS)**

5 112. MDI incorporates by reference all of the above paragraphs as if each were fully
6 alleged herein.

7 113. On or about March 8, 2006, MDI submitted to the CDCR a detailed proposal
8 regarding the range of services MDI intended to provide to LAC and CCI prison staff, including a
9 full disclosure of the proposed pricing of said services.

10 114. On or about August 31, 2006, the CDCR provided MDI with an executed copy of
11 the Contract Documents. The CDCR ordered MDI to begin providing services pursuant to these
12 Contract Documents, stating that the execution of a separate final contract was a mere formality
13 and that the executed Contract Documents themselves constituted the necessary written
14 authorization for MDI to begin work. Further, Dr. Farber-Szekrenyi and other CDCR
15 representatives expressly stated to MDI that the CDCR would pay MDI for its services pursuant
16 to the Contract Documents.

17 115. Pursuant to the CDCR's stated commitment to pay MDI for the services it
18 provided, the CDCR and the Receiver had a duty, *inter alia*, to make full and timely payments
19 due pursuant to the Contract Documents.

20 116. Pursuant to the CDCR's express statements to pay MDI for the services it
21 provided, MDI began providing services pursuant to the terms of the Contract Documents.

22 117. Subsequent to the CDCR's express statements that it would pay MDI for all
23 services rendered pursuant to the Contract Documents, the CDCR paid MDI for a portion of the
24 services provided through January 5, 2007.

25 118. In or around January 2007, at the direction of the Receiver, the CDCR wrongfully
26 stopped making payments to MDI for services performed pursuant to the Contract Documents.
27 MDI received its last payment from the CDCR on January 5, 2007.

28 119. By accepting MDI's continued services pursuant to the Contract Documents, the

1 CDCR and the Receiver are presumed to have accepted the terms upon which MDI agreed to
2 provide services, and assented to receive MDI's services in exchange for payment.

3 120. By accepting MDI's continued services pursuant to the Contract Documents, the
4 CDCR and the Receiver became indebted for any and all unpaid services rendered by MDI.

5 121. As a direct and proximate cause of the CDCR's and the Receiver's breach of their
6 duty to make payment to MDI for services rendered, MDI has sustained substantial damages to be
7 determined according to proof. These damages include the amounts due to MDI for services
8 performed and for the lost future profit under the contract.

9 122. As a direct result of the CDCR's and the Receiver's breach of their duty to make
10 payment to MDI for services rendered, the CDCR and the Receiver have placed the life, health
11 and safety of the CDCR's inmate population at risk. MDI's lawsuit will therefore result in the
12 enforcement of an important right affecting the public interest, namely unobstructed and
13 unfettered access to private health care services that the CDCR itself cannot provide.

14 123. Under the circumstances herein presented, the necessity and financial burden of
15 enforcing this right make an award of attorneys' fees appropriate pursuant to Code of Civil
16 Procedure section 1021.5.

17 124. The attorneys' fees incurred in the enforcement of this right should not, in the
18 interests of justice, be paid out of MDI's recovery.

19 WHEREFORE, MDI prays for relief as hereinafter set forth.

20 **SIXTH CAUSE OF ACTION**

21 **(FOR ACCOUNT STATED AGAINST ALL DEFENDANTS)**

22 125. MDI incorporates by reference all of the above paragraphs as if each were fully
23 alleged herein.

24 126. An account was stated in writing by and between MDI and the CDCR within one
25 year prior to the filing of the original Complaint in the Superior Court of the State of California
26 where it was agreed that the CDCR and the Receiver were indebted to MDI in the sum of not less
27 than \$4 million.

28 127. Although MDI demanded payment from the CDCR and the Receiver pursuant to

1 the account, neither all, nor any part of the agreed sum, has been paid since January 5, 2007.

2 128. The CDCR and the Receiver are indebted to MDI for money due in the sum of not
3 less than \$4 million for services rendered by MDI to the CDCR at the special instance and request
4 of the CDCR for which the CDCR agreed to pay MDI.

5 129. There is now due, owing and unpaid from the CDCR and the Receiver, the sum of
6 not less than \$4 million, plus interest at the legal rate thereon.

7 130. As a direct result of the CDCR's and the Receiver's failure to pay MDI for
8 services rendered, the CDCR and the Receiver have placed the life, health and safety of the
9 CDCR's inmate population at risk. MDI's lawsuit will therefore result in the enforcement of an
10 important right affecting the public interest, namely unobstructed and unfettered access to private
11 health care services that the CDCR itself cannot provide.

12 131. Under the circumstances herein presented, the necessity and financial burden of
13 enforcing this right make an award of attorneys' fees appropriate pursuant to Code of Civil
14 Procedure section 1021.5.

15 132. The attorneys' fees incurred in the enforcement of this right should not, in the
16 interests of justice, be paid out of MDI's recovery.

17 WHEREFORE, MDI prays for relief as hereinafter set forth.

18 **SEVENTH CAUSE OF ACTION**

19 **(FOR VIOLATIONS OF CALIFORNIA PROMPT PAYMENT ACT AGAINST ALL**
20 **DEFENDANTS)**

21 133. MDI incorporates by reference all of the above paragraphs as if each were fully
22 alleged herein.

23 134. California Government Code section 927, *et seq.* (hereafter "California's Prompt
24 Payment Act"), requires all state agencies to promptly pay properly submitted and undisputed
25 invoices incurred pursuant to a contract for services with a business.

26 135. The CDCR is a state agency within the meaning of California's Prompt Payment
27 Act and hence subject to its prompt payment requirement.

28 136. This Court authorized the Receiver to operate the CDCR.

1 137. The CDCR acquired the services of MDI pursuant to a contract for services within
2 the meaning of Government Code section 927.1(a)(1).

3 138. Since the execution of the Contract Documents between MDI and the CDCR, MDI
4 has properly submitted numerous invoices to the CDCR that are undisputed within the meaning
5 of California's Prompt Payment Act.

6 139. The CDCR and the Receiver have failed to pay undisputed invoices properly
7 submitted by MDI as required by Government Code section 927.1(a)(1) and/or Government Code
8 section 927.4. Consequently, pursuant to California's Prompt Payment Act, the CDCR and the
9 Receiver have failed to provide prompt payment for services rendered and are automatically
10 subject to late payment penalties.

11 140. Pursuant to California Government Code sections 927.3 and 927.4, due to the
12 CDCR's and the Receiver's violations of California's Prompt Payment Act, MDI is entitled to
13 payment of statutory penalties from the CDCR and the Receiver at the rate of one percent above
14 the rate accrued on June 30th of the prior year by the Pooled Money Investment Account, not to
15 exceed a rate of fifteen percent, on the improperly withheld progress payments until such time the
16 CDCR and the Receiver properly submit payment of the outstanding invoices in accordance with
17 Government Code section 927.6.

18 141. As a direct result of the CDCR's and the Receiver's violation of the Prompt
19 Payment Act, the CDCR and the Receiver have placed the life, health and safety of the CDCR's
20 inmate population at risk. MDI's lawsuit will therefore result in the enforcement of an important
21 right affecting the public interest, namely unobstructed and unfettered access to private health
22 care services that the CDCR itself cannot provide.

23 142. Under the circumstances herein presented, the necessity and financial burden of
24 enforcing this right make an award of attorneys' fees appropriate pursuant to Code of Civil
25 Procedure section 1021.5.

26 143. The attorneys' fees incurred in the enforcement of this right should not, in the
27 interests of justice, be paid out of MDI's recovery.

28 WHEREFORE, MDI prays for relief as hereinafter set forth.

EIGHTH CAUSE OF ACTION

(FOR NEGLIGENT MISREPRESENTATION AGAINST RECEIVER)

144. MDI incorporates by reference all of the above paragraphs as if each were fully alleged herein.

145. On February 16, 2007, more than a month after the suspension of payment, MDI met with the Receiver to discuss the ongoing relationship between MDI and the CDCR. At that time, the Receiver stated that MDI was doing an "excellent job" but expressed reservations about a potential corporate practice of medicine issue and opined that MDI required a license to provide the services negotiated under the contract. The Receiver represented that MDI could be paid for services rendered if it determined that MDI needed no medical license, despite knowing that he would not pay MDI for services rendered under any circumstances.

146. The foregoing representations by the Receiver that MDI had an opportunity to correct any alleged problems or defects regarding the issue of the corporate practice of medicine or medical licensure issues were untrue.

147. Regardless of the Receiver's actual belief regarding MDI's opportunity to correct any alleged problems or defects regarding the issue of the corporate practice of medicine, the representations were made without any reasonable grounds for believing them to be true.

148. The representations regarding MDI's opportunity to correct any alleged problems or defects regarding the issue of the corporate practice of medicine were made with the intent to induce MDI to continue performing services at LAC and CCI without pay.

149. MDI was unaware of the untruthfulness of the Receiver's representations regarding MDI's opportunity to correct any alleged problems or defects regarding the issue of the corporate practice of medicine.

150. MDI reasonably and justifiably relied on the Receiver's representations regarding MDI's opportunity to correct any alleged problems or defects regarding the issue of the corporate practice of medicine, obtained a legal opinion concluding that a medical license was not necessary, made repeated efforts to otherwise meet the Receiver's various demands, fruitlessly sought to engage the Receiver in further negotiations, and most importantly, continued to provide

1 services to the CDCR as per the terms of the Contract Documents without pay.

2 151. As a direct and proximate result of the Receiver's negligent representations and
3 MDI's reliance thereon, MDI was wrongfully deprived of payment for services rendered to the
4 CDCR.

5 152. MDI has suffered damages as a result of the Receiver's negligent
6 misrepresentations that are in excess of the minimum jurisdictional amount of this Court, the
7 exact amount of which will be proven at trial.

8 153. As a direct result of the Receiver's negligent representations and MDI's reliance
9 thereon, the life, health and safety of the CDCR's inmate population has been placed at risk.
10 MDI's lawsuit will therefore result in the enforcement of an important right affecting the public
11 interest, namely unobstructed and unfettered access to private health care services that the CDCR
12 itself cannot provide.

13 154. Under the circumstances herein presented, the necessity and financial burden of
14 enforcing this right make an award of attorneys' fees appropriate pursuant to Code of Civil
15 Procedure section 1021.5.

16 155. The attorneys' fees incurred in the enforcement of this right should not, in the
17 interests of justice, be paid out of MDI's recovery.

18 WHEREFORE, MDI prays for relief as hereinafter set forth.

19 **NINTH CAUSE OF ACTION**

20 **(FOR FALSE PROMISE AGAINST RECEIVER)**

21 156. MDI incorporates by reference all of the above paragraphs as if each were fully
22 alleged herein.

23 157. On February 16, 2007, more than a month after the suspension of payment, MDI
24 met with the Receiver to discuss the ongoing relationship between MDI and the CDCR. At that
25 time, the Receiver stated that MDI was doing an "excellent job" but expressed reservations about
26 a potential corporate practice of medicine issue and opined that MDI required a license to provide
27 the services negotiated under the contract. The Receiver represented that MDI could be paid for
28 services rendered if it were determined that MDI needed no medical license, despite knowing that

1 he would not pay MDI for services rendered under any circumstances.

2 158. The foregoing representation by the Receiver that MDI had an opportunity to
3 correct any alleged problems or defects regarding the issue of the corporate practice of medicine
4 or medical licensure issues was a promise made without an intent to honor or perform it.

5 159. MDI was unaware of the Receiver's intent to disregard his promise at the time the
6 promise as made.

7 160. MDI reasonably and justifiably relied on the Receiver's false promise regarding
8 MDI's opportunity to correct any alleged problems or defects regarding the issue of the corporate
9 practice of medicine, obtained a legal opinion concluding that a medical license was not
10 necessary, made repeated efforts to otherwise meet the Receiver's various demands, fruitlessly
11 sought to engage the Receiver in further negotiations, and most importantly, continued to provide
12 services to the CDCR as per the terms of the Contract Documents without pay.

13 161. As a direct and proximate result of the Receiver's false promise and MDI's
14 reliance thereon, MDI was wrongfully deprived of payment for services rendered to the CDCR.

15 162. MDI has suffered damages as a result of the Receiver's false promise that are in
16 excess of the minimum jurisdictional amount of this Court, the exact amount of which will be
17 proven at trial.

18 163. As a direct result of the Receiver's false promise, the life, health and safety of the
19 CDCR's inmate population has been placed at risk. MDI's lawsuit will therefore result in the
20 enforcement of an important right affecting the public interest, namely unobstructed and
21 unfettered access to private health care services that the CDCR itself cannot provide.

22 164. Under the circumstances herein presented, the necessity and financial burden of
23 enforcing this right make an award of attorneys' fees appropriate pursuant to Code of Civil
24 Procedure section 1021.5.

25 165. The attorneys' fees incurred in the enforcement of this right should not, in the
26 interests of justice, be paid out of MDI's recovery.

27 WHEREFORE, MDI prays for relief as hereinafter set forth.

28 ///

TENTH CAUSE OF ACTION**(FOR ECONOMIC DURESS AGAINST RECEIVER)**

166. MDI incorporates by reference all of the above paragraphs as if each were fully alleged herein.

167. On or about August 31, 2006, MDI and the CDCR entered into a valid written contract for services pursuant to which MDI would provide health care related information systems to the CDCR in return for payment.

168. In or around January 2007, the Receiver unilaterally declared that all payments to MDI by the CDCR for services rendered pursuant to the contract were to be halted. However, the Receiver also demanded that MDI continue to perform under the terms of the Contract Documents without payment.

169. On February 16, 2007, after multiple requests by MDI to set a meeting with the Receiver to discuss his actions, MDI met with the Receiver to discuss the ongoing relationship between MDI and the CDCR and the Receiver's unilateral declaration that all payments be halted. At that meeting, the Receiver stated that MDI was doing an "excellent job" and ordered MDI to continue to perform. MDI expressed reservations about continuing work without receiving payment. In response, the Receiver threatened MDI, stating that if MDI failed to continue providing services, he would make sure MDI never worked in California again.

170. The Receiver's threat was wrongful and unlawful.

171. The Receiver, as the federal receiver in control of the entire Californian prison health care market, possessed the authority to exclude MDI from conducting business with the State of California prison system, one of the largest in the nation. The weight of the Receiver's threat deprived MDI of the right to exercise its business decisions with an unfettered free will.

172. As a result of the Receiver's threat, and fearing for its future ability to do business in California, MDI was forced to continue providing services to the CDCR without payment for the purpose of protecting its business interests in the State of California and avoiding exclusion from California's prison health care market.

173. The Receiver has made good on his threats that he would "make sure MDI never

1 worked in California again.” Since MDI was improperly terminated, it has been denied at least
 2 two state contracts on which it was either the lowest qualified bidder or a subcontractor to the
 3 lowest qualified bidder due, in part, to perceived “conflicts of interest” between MDI and the
 4 CDCR.

5 174. As a direct and proximate result of the Receiver’s wrongful threat and his acting
 6 on this threat, MDI has suffered damages in excess of the minimum jurisdictional amount of this
 7 Court, the exact amount of which will be proven at trial.

8 175. As a direct and proximate result of the Receiver’s threat and his acting on his
 9 threat, MDI has sustained a substantial detriment in the form of loss of future business and profits
 10 on other California contracts, which was a foreseeable and intended result of the Receiver’s threat
 11 and acting thereon.

12 176. As a direct result of the Receiver’s wrongful threat, the life, health and safety of
 13 the CDCR’s inmate population has been placed at risk. MDI’s lawsuit will therefore result in the
 14 enforcement of an important right affecting the public interest, namely unobstructed and
 15 unfettered access to private health care services that the CDCR itself cannot provide.

16 177. Under the circumstances herein presented, the necessity and financial burden of
 17 enforcing this right make an award of attorneys’ fees appropriate pursuant to Code of Civil
 18 Procedure section 1021.5.

19 178. The attorneys’ fees incurred in the enforcement of this right should not, in the
 20 interests of justice, be paid out of MDI’s recovery.

21 WHEREFORE, MDI prays for relief as hereinafter set forth.

22 **ELEVENTH CAUSE OF ACTION**

23 **(FOR ABUSE OF PROCESS AGAINST RECEIVER)**

24 179. MDI incorporates by reference all of the above paragraphs as if each were fully
 25 alleged herein.

26 180. On or about August 31, 2006, MDI and the CDCR entered into a valid written
 27 contract for services pursuant to which MDI would provide health care related information
 28 systems to the CDCR in return for payment.

1 181. Pursuant to the terms of the emergency procedures set forth in the March and
2 November Orders, the CDCR was mandated to pay all “outstanding, valid and CDCR-approved
3 medical invoices (even in the absence of a separate written approved contract)” for an indefinite
4 period.

5 182. The Receiver knew of the executed Contract Documents between MDI and the
6 CDCR as well as this Court’s March and November Orders.

7 183. In or around January 2007, the Receiver unilaterally declared that all payments to
8 MDI by the CDCR for services rendered pursuant to the contract were halted. However, the
9 Receiver also demanded that MDI continue to perform under the terms of the Contract
10 Documents without payment.

11 184. On February 16, 2007, after multiple requests by MDI to set a meeting with the
12 Receiver to discuss his actions, MDI met with the Receiver to discuss the ongoing relationship
13 between MDI and the CDCR and the Receiver’s unilateral declaration that all payments be halted.
14 At that meeting, the Receiver stated that MDI was doing an “excellent job” and ordered MDI to
15 continue to perform. MDI expressed reservations about continuing work without receiving
16 payment. In response, the Receiver threatened MDI, stating that if MDI failed to continue
17 providing services, he would make sure MDI never worked in California again.

18 185. The Receiver’s threat to exclude MDI from the California prison health care
19 market while acting in the name of this Court and under authority of a federal court, constituted
20 an improper use of judicial power intended to force MDI to perform services at CCI and LAC
21 without pay.

22 186. The Receiver’s threat to MDI constituted a willful and intentional act made in his
23 capacity as a receiver.

24 187. The Receiver has made good on his threats that he would “make sure MDI never
25 worked in California again.” Since MDI was improperly terminated, it has been denied at least
26 two state contracts on which it was either the lowest qualified bidder or a subcontractor to the
27 lowest qualified bidder due, in part, to perceived “conflicts of interest” between MDI and the
28 CDCR.

188. As a direct and proximate result of the Receiver's abuse of process, MDI has suffered damages in excess of the minimum jurisdictional amount of this Court, the exact amount of which will be proven at trial.

189. As a direct and proximate result of the Receiver's abuse of process, MDI has sustained a substantial detriment in the form of loss of future business and profits on other California contracts, which was a foreseeable and intended result of the Receiver's abuse of process.

190. As a direct result of the Receiver's abuse of process, the life, health and safety of the CDCR's inmate population has been placed at risk. MDI's lawsuit will therefore result in the enforcement of an important right affecting the public interest, namely unobstructed and unfettered access to private health care services that the CDCR itself cannot provide.

191. Under the circumstances herein presented, the necessity and financial burden of enforcing this right make an award of attorneys' fees appropriate pursuant to Code of Civil Procedure section 1021.5.

192. The attorneys' fees incurred in the enforcement of this right should not, in the interests of justice, be paid out of MDI's recovery.

WHEREFORE, MDI prays for relief as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, MDI prays for relief as follows:

As to the First Cause of Action for Breach of Contract against All Defendants

1. General damages, including payment for services rendered and lost future profits on the contract in an amount according to proof at trial;
2. Special damages for lost future business and profits in an amount according to proof at trial;
3. For interest at the legal rate as permitted by law;
4. For reasonable attorneys' fees as permitted by law; and
5. For such other and further relief as the Court may deem proper.

///

As to the Second Cause of Action for Wrongful Termination of Contract against All Defendants

1. General damages, including payment for services rendered and lost future profits on the contract in an amount according to proof at trial;
2. Special damages for lost future business and profits in an amount according to proof at trial;
3. For interest at the legal rate as permitted by law;
4. For reasonable attorneys' fees as permitted by law; and
5. For such other and further relief as the Court may deem proper.

As to the Third Cause of Action for Promissory Estoppel against All Defendants

1. For the CDCR and the Receiver to be estopped from denying the existence of a valid and binding contract for services between the CDCR and MDI;
2. General damages, including payment for services rendered and lost future profits on the contract in an amount according to proof at trial;
3. For interest at the legal rate as permitted by law;
4. For reasonable attorneys' fees as permitted by law; and
5. For such other and further relief as the court may deem proper.

As to the Fourth Cause of Action for Quantum Meruit/Unjust Enrichment against All Defendants

1. For damages equal to the fair and reasonable value of work, labor and services rendered and performed by MDI to the CDCR and the Receiver, the value of which is to be determined according to proof at trial;
2. For interest at the legal rate as permitted by law;
3. For reasonable attorneys' fees as permitted by law; and
4. For such other and further relief as the court may deem proper.

As to the Fifth Cause of Action for Assumpsit against All Defendants

1. For such amounts as are due and owing, in a precise amount according to proof at trial;

2. For interest at the legal rate as permitted by law;
3. For reasonable attorneys' fees as permitted by law; and
4. For such other and further relief as the court may deem proper.

As to the Sixth Cause of Action for Account Stated against All Defendants

1. For such amounts as are due and owing, in a precise amount according to proof at trial;
2. For interest at the legal rate as permitted by law;
3. For reasonable attorneys' fees as permitted by law; and
4. For such other and further relief as the court may deem proper.

As to the Seventh Cause of Action for Violations of California Prompt Payment Act against All Defendants

1. For such amounts as are due and owing, in a precise amount according to proof at trial;
2. For reasonable attorneys' fees as permitted by law; and
3. For all statutory penalties pursuant to California Prompt Payment Act, in an amount according to proof at trial.

As to the Eighth Cause of Action for Negligent Misrepresentation against Receiver

1. For general damages, in an amount according to proof at trial, including payment for services rendered and lost future profits on the contract in an amount according to proof at trial;
2. For interest at the legal rate as permitted by law;
3. For reasonable costs and expenses;
4. For reasonable attorneys' fees as permitted by law; and
5. For such other and further relief as the court may deem proper.

As to the Ninth Cause of Action for False Promise against Receiver

1. For general damages, in an amount according to proof at trial, including payment for services rendered and lost future profits on the contract in an amount according to proof at trial;

2. For punitive damages;
3. For interest at the legal rate as permitted by law;
4. For reasonable costs and expenses;
5. For reasonable attorneys' fees as permitted by law; and
6. For such other and further relief as the court may deem proper.

As to the Tenth Cause of Action for Economic Duress against Receiver

1. For general damages, in an amount according to proof at trial, including payment for services rendered and lost future profits on the contract in an amount according to proof at trial;
2. For special damages for lost future business and profits in an amount according to proof at trial;
3. For interest at the legal rate as permitted by law;
4. For reasonable costs and expenses;
5. For reasonable attorneys' fees as permitted by law; and
6. For such other and further relief as the court may deem proper.

///

///

///

///

///

///

///

///

///

///

///

///

///

As to the Eleventh Cause of Action for Abuse of Process against Receiver

1. For general damages, in an amount according to proof at trial, including payment for services rendered and lost future profits on the contract in an amount according to proof at trial;
2. For special damages for lost future business and profits in an amount according to proof at trial;
3. For punitive damages;
4. For interest at the legal rate as permitted by law;
5. For reasonable costs and expenses;
6. For reasonable attorneys' fees as permitted by law; and
7. For such other and further relief as the Court may deem proper.

Dated: February 23, 2010

**WATT, TIEDER, HOFFAR
& FITZGERALD, L.L.P.**

By: /s/ Bennet J. Lee

Bennett J. Lee (blee@wthf.com)
Garrett E. Dillon (gdillon@wthf.com)
Sara K. Hayden (shayden@wthf.com)
Attorneys for Plaintiff
MEDICAL DEVELOPMENT
INTERNATIONAL

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

Dated: February 23, 2010

**WATT, TIEDER, HOFFAR
& FITZGERALD, L.L.P.**

By: /s/ Bennet J. Lee

Bennett J. Lee
Garrett E. Dillon
Sara K. Hayden
Attorneys for Plaintiff
MEDICAL DEVELOPMENT
INTERNATIONAL